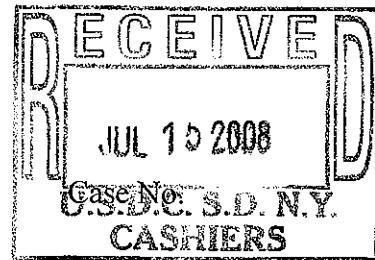


IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPALACHIAN INSURANCE COMPANY,)
Plaintiff,)
vs.)
CENTURY INDEMNITY COMPANY,)
as successor to CCI Insurance Company,)
as successor to Insurance Company of)
North America,)
Defendant.)



COMPLAINT

Plaintiff Appalachian Insurance Company ("Appalachian"), by and through its attorneys, and for its Complaint against Defendant Century Indemnity Company, as successor to CCI Insurance Company, as successor to Insurance Company of North America ("INA"), alleges as follows:

NATURE OF THE ACTION

1. This is a civil action brought by Appalachian relating to the obligations owed to it by INA pursuant to certain contracts of reinsurance entered between the parties, and INA's subsequent breach of those contracts.

PARTIES

2. Plaintiff Appalachian is a Rhode Island corporation with its principal place of business in Johnston, Rhode Island.

3. Defendant INA is a Pennsylvania corporation with its principal place of business in Philadelphia, Pennsylvania.

JURISDICTION AND VENUE

4. This matter is brought pursuant to 28 U.S.C. §1332. The amount in controversy in this action exceeds Seventy-Five Thousand Dollars (\$75,000), exclusive of interest, costs and fees.

5. Venue lies in this forum pursuant to 28 U.S.C. §1391(b) because the claims herein alleged are substantially related to events occurring in this district.

THE REINSURANCE CERTIFICATES

6. Appalachian and INA entered into the following Certificates of Facultative Reinsurance, with Appalachian as the Reinsured and INA as the Reinsurer: (1) Certificate No. FRC01355, effective November 1, 1972 to November 1, 1975; and (2) Certificate No. FRC01356, effective November 1, 1972 to November 1, 1975 (collectively, the "Reinsurance Certificates"). True and correct copies of the Reinsurance Certificates as contained in Appalachian's files are attached hereto as Exhibits "A" and "B," respectively.

7. The Declarations of the Certificates provide that INA will, on a Contributing Excess basis, pay Appalachian a portion of loss, excess of a stated retention maintained by Appalachian, that Appalachian incurs under reinsured excess third party liability policies of insurance issued by Appalachian to Dresser Industries, Inc., et al. ("Dresser").

8. The Reinsurance Certificates include the following provisions:

A. The Company [Appalachian] warrants to retain for its own account or that of its reinsurer(s) the amount of liability specified in Item 3 of the Declarations, unless otherwise declared to the Reinsurer [INA], and the liability of the Reinsurer specified in Item 4 of said Declarations shall follow that of the Company and except as otherwise specifically provided herein, shall be subject in all respects to all the terms and conditions of the Company's policy except such as may purport to create a direct obligation of the

Reinsurer to the original Insured. The Company shall furnish the Reinsurer with a copy of its policy and all endorsements thereto which in any manner affect this certificate, and shall make available for inspection and place at the disposal of the Reinsurer at reasonable times any of its records relating to this reinsurance or claims in connection therewith.

C. All claims involving this reinsurance, when settled by the Company, shall be binding on the Reinsurer, which, shall be bound to pay its proportion of such settlements, and in addition thereto, in the ratio that the Reinsurer's loss payment bears to the Company's gross loss payment, with respect to business accepted on an excess of loss basis and in the ratio that the Reinsurer's limit of liability bears to the Company's gross limit of liability with respect to business accepted on a pro rata basis, its proportion of expenses, other than Company salaries and office expenses, incurred by the Company in the investigation and settlement of claims or suits and, with the prior consent of the Reinsurer to trial court proceedings, its proportion of court costs and interest on any judgment or award.

D. Payment of its proportion of loss and expense paid by the Company will be made by the Reinsurer to the Company promptly following receipt of proof of loss.

See Exhibits "A" and "B."

THE APPALACHIAN POLICIES AND THE UNDERLYING INSURANCE ACTION

9. Appalachian issued certain excess liability policies to Dresser in the 1970s, under which Dresser alleged that it was entitled to coverage for certain asbestos-related liabilities described hereinbelow.

10. The following excess liability policies issued by Appalachian to Dresser are reinsured under the Reinsurance Certificates: (1) Excess Third Party Liability Policy No. XL 71377, effective from November 1, 1972 to November 1, 1975, reinsured by Certificate No. FRC 01356; and (2) Excess Third Party Liability Policy No. XL 71378, effective from November 1, 1972 to November 1, 1975, reinsured by Certificate No. FRC 01355. Policy No. XL 71378 was cancelled effective November 1, 1973.

11. Hundreds of thousands of claims were made around the country against Dresser and its subsidiary, Harbison-Walker Refractories ("H-W"), in which claimants alleged to have suffered various diseases and injuries that they attributed to exposure to asbestos in Dresser's and its subsidiary's products.

12. Dresser filed a coverage action against Appalachian in Texas in September of 2001, seeking a judicial declaration with respect to insurance coverage for the underlying asbestos claims (the "Dresser coverage action").

13. The Dresser coverage action, as well as certain coverage claims brought by H-W against Dresser and its insurers, including Appalachian, were ultimately mediated and settled pursuant to a confidential Settlement Agreement and Release executed by Appalachian on November 15, 2004.

14. Appalachian kept INA apprised in writing of all of the significant underlying developments, including details of the mediation and settlement as they took place.

FIRST CAUSE OF ACTION
(Breach of Contract)

15. Appalachian repeats and incorporates by reference all the allegations set forth in Paragraphs 1 through 14 as though fully set forth herein.

16. Appalachian ceded to and billed INA its portion of the settlement payable per the terms, conditions and provisions of the Reinsurance Certificates as follows: (1) \$157,058 by letter dated January 23, 2007 under Certificate No. FRC 01356; (2) \$885,695 by letter dated December 27, 2007 under Certificate No. FRC 01356; and (3) \$557,060 by letter dated December 27, 2007 under Certificate No. FRC 01355, for the total billed amount of \$1,599,813.

17. To date, INA has failed to pay Appalachian any portion of the amount due and owing under the Reinsurance Certificates.

18. INA has breached the terms, conditions and provisions of the Reinsurance Certificates by its failure to pay any portion of the \$1,599,813 properly ceded to those certificates by Appalachian.

19. Appalachian has satisfied any and all obligations and conditions that it owes or may owe under the terms and provisions of the Reinsurance Certificates.

WHEREFORE, Appalachian hereby requests that the Court enter judgment in its favor:

- (a) holding that INA breached the terms, conditions and provisions of the Reinsurance Certificates, as well as its duty of utmost good faith and fair dealing owed to Appalachian;
- (b) holding that INA must pay Appalachian compensatory damages as a result of INA's breach of the Reinsurance Certificates; and
- (c) awarding Appalachian such other and further relief as this Court may deem appropriate, including attorney's fees, expenses and costs.

Respectfully submitted,

RUBIN, FIORELLA & FRIEDMAN LLP

By:

Bruce Friedman

Bruce M. Friedman, Esq. (BF-9074)
bfriedman@rubinfiorella.com
One of the attorneys for Plaintiff
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(212) 953-2381

Of Counsel:

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Suite 2400
Chicago, Illinois 60606
(312) 762-3100

*Attorneys for Plaintiff
Appalachian Insurance Company*

Dated: July 14, 2008

260111

CERTIFICATE OF FACULTATIVE REINSURANCE ISSUE

FRC 01355



INSURANCE COMPANY OF NORTH AMERICA

1600 Xerox Square

Pittsburgh, Pennsylvania 15222

250 Broadway, New York, N. Y. 10007

DECLARATIONS

CEDING COMPANY AND ADDRESS

INTERMEDIARY

Appalachian Insurance Company
c/o Willcox, Baringer & Company, Inc.
127 John Street
New York, New York 10038

ATTENTION

Mr. James R. Force
Assistant Vice President

NAME OF INSURED		RENEWAL OF CERTIFICATE NO.	
Dresser Industries, Inc. et al		FRC	
CITY	STATE	REPLACES CERTIFICATE NO.	
P.O. Box 718, Dallas, Texas 75221		FRC	
COMPANY POLICY NO.	POLICY PERIOD		
XL 71378	November 1, 1972 to November 1, 1975		

DESCRIPTION	PRIMARY CONTRACTUAL LIABILITY	EXCESS CONTRACTUAL LIABILITY	REINSURER'S LIABILITY
Excess Umbrella Liability	\$5,000,000 CSL each occ. agg. part of \$25,000,000 CSL each occ.-agg. excess \$65,000,000 CSL each occ. agg, which is excess of underlying insurance.	\$2,500,000 CSL each occ.-agg. part of \$5,000,000 CSL each occ.-agg.	\$2,500,000 CSL each occ.-agg. part of \$5,000,000 CSL each occ.-agg. D.R. per M.W.P. se

THE TERM OF THIS CERTIFICATE
UNLESS TERMINATED BY CANCELLATION,
SHALL BE FROM THE

1st DAY OF November , 1972 TO THE 1st DAY OF November , 1975

THE NET PREMIUM FOR THIS CERTIFICATE SHALL BE \$ 2,906.25 FIXED CHARGE DEPOSIT PREMIUM
payable in equal annual installments of \$968.75 each

AUDIT PERIOD	MINIMUM PREMIUM FOR REINSURANCE PERIOD	MINIMUM PREMIUM FOR CERTIFICATE
	\$2,906.25	\$150.00

COUNTERSIGNED AT New York, N. Y. THE 30th DAY OF March 19 73
AEB/af-3/30/73

BY

AUTHORIZED SIGNATURE

RECEIVED

INSURANCE COMPANY OF NORTH AMERICA
1600 Arch Street
Philadelphia Pennsylvania 19101-2628

RWJH

(hereinafter, the Reinsurer)

In consideration of the payment of the premium, and subject to the terms, conditions and limits of liability set forth herein, and in the Declarations made a part hereof, the Reinsurer shall hereby insure the ceding company (herein in the Declarations herein called the Company) in respect of the Company's reinsurance coverage contained in the policy, and specifically in relation thereto, as follows:

REINSURING AGREEMENTS AND CONDITIONS

- A. The Company warrants to retain for its own account, and if the treaty reinsurance(s) the amount of liability specified in Item 1 of the Declarations, unless otherwise declared by the Reinsurer, and the liability of the Reinsurer specified in Item 4 of said Declarations shall follow that of the Company and except as otherwise specifically provided herein, shall be subject in all respects to all the terms and conditions of the Company's policy except such as may purport to create a direct obligation of the Reinsurer to the original insured. The Company shall furnish the Reinsurer with a copy of its policy and all endorsements thereto which in any manner affect this certificate, and shall make available for inspection and place of the disposal of the Reinsurer, at reasonable times any of its records relating to this reinsurance or claims in connection therewith.
- B. Prompt notice, shall be given to the Reinsurer by the Company of any occurrence or accident which appears likely to involve this reinsurance and while the Reinsurer does not undertake to investigate or defend claim(s) or suits it shall nevertheless have the right and be given the opportunity to associate with the Company and its representatives at its own expense in the defense and control of any claim, suit or proceeding involving this reinsurance, with the full cooperation of the Company.
- C. All claims involving this reinsurance when written by the Company shall be binding on the Reinsurer, which shall be bound to pay its pro rata portion of such settlements, and in addition thereto in the ratio that the Reinsurer's loss payment bears to the Company's gross loss payment, with respect to business accepted on an excess of loss basis and in the ratio that the Reinsurer's limit of liability bears to the Company's limit of liability, in respect to business accepted on a pro rata basis, its proportion of expenses other than Company salaries and office expenses incurred by the Company in the investigation and settlement of claims or suits and with the prior consent of the Reinsurer to final court proceedings, its proportion of court costs and interest on any judgment or award.
- D. Payment of no portion of loss and expense paid by the Company will be made by the Reinsurer to the Company promptly following receipt of proof of loss.
- E. The Reinsurer will be paid or credited by the Company with its pro rata portion of salvage, reinsurance premium, adjustment expenses, as do by the Company, less the actual cost (excluding Company salaries and office expenses) of obtaining such reimbursement or making such recovery. If the reinsurance afforded by this certificate is on the excess of loss basis, such shall be applied in the inverse order in which liability attaches.
- F. The Company will be liable to the Reinsurer under this Certificate for all expenses, legal, loss of profit, and other expenses, up to \$100,000,000, less legal fees, less than \$100,000,000.
- G. In the event of insolvency of the Company, the rights of the Reinsurer are extended to conform to the statute of each state of the United States having jurisdiction to the extent that such statute permits, and the Reinsurer may exercise its rights in the Company, in accordance with such state's law, but less than its \$100,000,000 liability under this certificate, subject to such laws of such state as would apply to it all or in the proportion of say one half to application.
- H. Cancellation of this certificate, the Company shall be entitled to cancellation of this Certificate and it may also be cancelled on a pro rata basis by either party giving 60 days notice, ^{STAYING RIGHT TO 120 DAYS} thereafter such cancellation shall be effective.
- I. The terms of this certificate shall not be construed to mean that the Reinsurer is bound to form a partnership, association or joint venture with the Company or its representatives or the Reinsurer.

In witness whereof, this 15th day of July, 1987,

by its President and Secretary Treasurer, William F. Jones, and the foregoing and by signing whereon the foregoing witnesses, shall be witnessed and countersigned by the representative of the Reinsurer,

(Signature)

\$1,000.00


INSURANCE COMPANY OF NORTH AMERICA

In consideration of the payment of the premium as herein provided, Reinsuring Agreement "A" is amended to read as follows:

A. The Company warrants to retain for its own account or that of its reinsurer(s) the amount of liability specified in Item 3 of the Declarations, unless otherwise declared to the Reinsurer, and the liability of the Reinsurer specified in Item 4 of said Declarations shall follow that of the Company and except as otherwise specifically provided herein, shall be subject in all respects to all the terms and conditions of the Company's policy except such as may purport to create a direct obligation of the Reinsurer to the original Insured. The Company shall furnish the Reinsurer with a copy of its policy and all endorsements thereto which in any manner affect this certificate, and shall make available for inspection and place at the disposal of the Reinsurer at reasonable times any of its records relating to this reinsurance or claims in connection therewith.

Nothing herein contained shall vary, alter or extend any provision or condition of the certificate other than as above stated.

CEDING CO.	Appalachian Insurance Company	
NAME OF INSURED	Dresser Industries, Inc. et al	
CERTIFICATE NO. FRC	01355	
EFFECTIVE DATE:	11/1/72	ENDORSEMENT NO. 1

AEB/af-3/30/73

A handwritten signature in black ink, appearing to read "A. Bruegman".

Authorized Agent

A handwritten signature in black ink, appearing to read "Charles T. Cox".

President

CERTIFICATE OF FACULTATIVE REINSURANCE ISSUE

FRC 01356



INSURANCE COMPANY OF NORTH AMERICA

1600 Arch Street

Philadelphia, Pennsylvania 19102

250 Broadway, New York, N. Y. 10007

DECLARATIONS

CEDING COMPANY AND ADDRESS

Appalachian Insurance Company
 c/o Willcox, Baringer & Company, Inc.
 127 John Street
 New York, New York 10038

INTERMEDIARY

Mr. James R. Force
 Assistant Vice President

NAME OF INSURED		RENEWAL OF CERTIFICATE NO.	
Dresser Industries, Inc. et al		FRC	
CITY	STATE	REPLACES CERTIFICATE NO.	
P.O. Box 718, Dallas, Texas 75221		FRC	
COMPANY POLICY NO.	POLICY PERIOD		
XB 71377	November 1, 1972 to November 1, 1975		

ITEM 1 TYPE OF INSURANCE	ITEM 2 POLICY LIMITS AND APPLICATION	ITEM 3 COMPANY RETENTION	ITEM 4 REINSURANCE ACCEPTED	ITEM 5 BASIS OF ACCEPTANCE
Excess Umbrella Liability	\$5,000,000 CSL each occ. agg. part of \$15,000,000 CSL each occ.-agg. excess of \$50,000,000 CSL each occ.-agg. which is excess of underlying insurance.	\$2,500,000 CSL each occ.-agg. part of \$5,000,000 CSL each occ.-agg.	\$2,500,000 CSL each occ.-agg. part of \$5,000,000 CSL each occ.-agg.	Contributing Excess ? O.K. per my WP. ea

THE TERM OF THIS CERTIFICATE
 UNLESS TERMINATED BY CANCELLATION,
 SHALL BE FROM THE

1st DAY OF November, 1972 TO THE 1st DAY OF November, 1975

THE NET PREMIUM FOR THIS CERTIFICATE SHALL BE \$ 3,487.50 FIXED CHARGE DEPOSIT PREMIUM
 payable in equal annual installments of \$1,162.50 each

PREMIUM BASIS	ESTIMATED EXPOSURE	RATE	ESTIMATED PREMIUM

AUDIT PERIOD	MINIMUM PREMIUM FOR REINSURANCE PERIOD	MINIMUM PREMIUM FOR CERTIFICATE
	\$3,487.50	\$500.00

COUNTERSIGNED AT New York, N. Y. THE 30th DAY OF March 19 73
 AEB/af-3/30/73

BY  AUTHORIZED SIGNATURE

INSURANCE COMPANY OF NORTH AMERICA
1600 Arch Street
Philadelphia, Pennsylvania 19101

(hereinafter called the Reissuer)

In consideration of the payment of the premium, and subject to the terms, conditions and limits of liability set forth herein, and in the Declarations made part and parcel the Remittance, doth hereby release the underwriting company named in the Declarations (herein called the Company) in respect of the Excess policy as follows:

REINSURING AGREEMENTS AND CONDITIONS

HOITAJATTA

As President and Secretary treasurer of this League, I beg the army that will be holding their first Annual Conference at the Auditorium, to meet in the

2

Hoppy Head

John C. Goff

2011-06-16 10:00:00



INSURANCE COMPANY OF NORTH AMERICA

In consideration of the payment of the premium as herein provided, Reinsuring Agreement "A" is amended to read as follows:

A. The Company warrants to retain for its own account or that of its reinsurer(s) the amount of liability specified in Item 3 of the Declarations, unless otherwise declared to the Reinsurer, and the liability of the Reinsurer specified in Item 4 of said Declarations shall follow that of the Company and except as otherwise specifically provided herein, shall be subject in all respects to all the terms and conditions of the Company's policy except such as may purport to create a direct obligation of the Reinsurer to the original Insured. The Company shall furnish the Reinsurer with a copy of its policy and all endorsements thereto which in any manner affect this certificate, and shall make available for inspection and place at the disposal of the Reinsurer at reasonable times any of its records relating to this reinsurance or claims in connection therewith.

Nothing herein contained shall vary, alter or extend any provision or condition of the certificate other than as above stated.

CEDING CO.	Appalachian Insurance Company	
NAME OF INSURED	Dresser Industries, Inc. et al	
CERTIFICATE NO. FRC	01356	
EFFECTIVE DATE:	11/1/72	ENDORSEMENT NO. 1

AEB/af-3/30/73